

C. GRANVILLE WYCHE
ALFRED F. BURGESS
C. THOMAS WYCHE
DAVID L. FREEMAN
JAMES C. PARHAM, JR.
JAMES M. SHOEMAKER, JR.
WILLIAM W. KEHL
CHARLES W. WOFFORD
LARRY D. ESTRIDGE
D. ALLEN GRUMBINE
CARY H. HALL, JR.
CARL F. MULLER
HENRY L. PARR, JR.
BRADFORD W. WYCHE
ERIC B. AMSTUTZ*

WYCHE, BURGESS, FREEMAN & PARHAM

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

GREENVILLE, SOUTH CAROLINA 29603

February 6, 1981

POST OFFICE BOX 10207
44 EAST CAMPERDOWN WAY
CABLE ADDRESS: JURAL
TELEPHONE 803-242-3131

12873
12873

RECORDATION NO. Filed 1425

*ADMITTED TO D. C. BAR ONLY

FFB 9 1981 -2 20 PM

INTERSTATE COMMERCE COMMISSION

Date 2/9/81
Fee \$50.00

ICC Washington, D. C.

Interstate Commerce Commission
12th and Constitution Ave., N. W.
Washington, D. C. 20423

Attention: Mrs. Lee, Room 2303

Dear Mrs. Lee:

Enclosed herewith for filing is the original and one copy of a Management Agreement dated as of October 1, 1980, between Buck Mickel and National Railway Utilization Corporation. This Agreement covers 29 70-ton 50' boxcars bearing road numbers PICK 55000 - PICK 55015 and PICK 55017 - PICK 55029, both inclusive.

The address for Mr. Mickel is 415 Crescent Avenue, Greenville, South Carolina 29605. The address for National Railway Utilization Corporation is 1100 Centre Square East, 1500 Market Street, Philadelphia, Pa. 19102.

The Loan and Security Agreement which covered these cars was filed with the Interstate Commerce Commission on March 27, 1974 and bears Recordation No. 7452.

Our check in the amount of \$50.00 is enclosed to cover the filing fee. Please return the original to the undersigned with the recording data stamped thereon when filing is completed.

Very truly yours,



William W. Kehl

WWK:ebw

Enclosures

MANAGEMENT AGREEMENT

FFB 9 1981 -2 22 PM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of October 1, 1980, between NATIONAL RAILWAY UTILIZATION CORPORATION (NRUC) and Buck Mickel (Owner).

W I T N E S S E T H :

WHEREAS, the Owner owns twenty-nine 70-ton 50' boxcars which bear railroad numbers PICK 55000 - PICK 55015 and PICK 55017 - PICK 55029 (the Equipment, and each such boxcar being herein referred to as a Unit); and

WHEREAS, the Owner desires to retain the services of NRUC, as agent of the Owner, for the purpose of managing the Equipment; and

WHEREAS, NRUC is willing to accept such appointment as agent, to manage the Equipment for the account of the Owner during the term of this Agreement; and

WHEREAS, the Owner has executed and delivered to North Carolina National Bank as Lender (the Lender) a Loan and Security Agreement (the Security Agreement) dated February 28, 1974 with respect to the Equipment as Security for the non-recourse note of Owner dated February 28, 1974 in the original principal amount of \$420,000;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

1. Appointment of Agent; Acceptance. Subject to the terms and conditions of this Agreement, the Owner hereby appoints NRUC as agent of the Owner for the purposes herein stated and NRUC hereby accepts such appointment. In such connection, NRUC acknowledges receipt of an executed copy of the Security Agreement and hereby agrees that in the performance of its duties as agent hereunder it shall be bound by the terms and provisions thereof and that its rights hereunder and the rights of any railroad with which NRUC, on behalf of the Owner, shall arrange for use of the Equipment in accordance herewith, shall be subject and subordinate to the rights of the Lender under the Security Agreement.

2. Term. This Agreement shall remain in force until it shall have been terminated as to all of the Units of Equipment. The term of this Agreement with respect to each Unit shall commence on October 1, 1980 and shall continue until September 30, 1985, unless sooner terminated as hereinafter provided.

3. Ownership. The parties agree that the Owner shall at all times be and remain the owner of the Equipment, and that nothing in this Agreement is in any way intended to grant any ownership interest or property right in the Equipment to NRUC or to any railroad whose markings appear on the Equipment. Further, NRUC will not directly or indirectly create or suffer to exist, any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Equipment in favor of persons claiming through or under NRUC or through or under any railroad whose markings appear on the Equipment. NRUC will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest or claim in favor of persons claiming through or under NRUC or through or under any railroad whose markings appear on the Equipment, and shall indemnify Owner and hold the Owner harmless from and against all claims, damages and expenses arising out of any such third party claim.

4. Management Duties. The agency and management functions to be performed by NRUC hereunder shall include those set forth in the Security Agreement and, to the extent not inconsistent therewith, those specifically set forth in this Section 4 and such other duties and responsibilities as shall be agreed upon from time to time by the parties hereto:

A. NRUC shall manage and arrange for the utilization of the Units at NRUC's complete discretion and shall perform all necessary administrative acts to ensure the proper utilization of said Units and the protection of the Lender's and the Owner's interest therein.

B. NRUC shall make available for the Units the markings of a railroad controlled by NRUC or with which NRUC has entered on agreement for the use of the Equipment. NRUC agrees that the Units shall at all times have affixed thereto the markings required by the Security Agreement and shall be lettered with such railroad markings and the name and/or other insignia used by such railroad. Such name or insignia shall comply with all applicable regulations. The NRUC logotype insignia may be affixed to each side of the Units in standard size.

C. NRUC shall prepare all documents for filing relating to the registration, maintenance and record keeping functions for the Units in accordance with Association of American Railroad (AAR) interchange agreements. Such matters shall include, but shall not be limited to, the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Units; (ii) registration for each Unit in the Official Railway Equipment Register and the Universal Machine Language Equipment Register directing, inter alia, that all correspondence from railroads using such Units shall be addressed to NRUC; and (iii) such reports as may be required from time to time by the Interstate Commerce Commission (ICC) and other regulatory agencies with respect to the Units. Any record keeping performed by NRUC and all records of payment and charges and all correspondence relating to the Units shall be separately recorded and maintained by NRUC in a form suitable for reasonable inspection by the Lender and the Owner from time to time during regular business hours of NRUC. NRUC shall supply the Lender and the Owner with such reports regarding the use of the Units as the Lender and the Owner may reasonably request.

D. NRUC shall perform all car accounting services for the Units and send reports to the Owner on a quarterly basis itemizing all revenues by Unit number.

E. NRUC shall monitor, make, or cause to be made, such inspections of and maintenance and repairs to the Equipment, including replacement of parts, as may be required to maintain the Equipment in good operating condition (ordinary wear and tear excepted) and in compliance with all applicable rules and regulations of government and industry authorities relating to the qualification of the Equipment for use in the Railroad Interchange System throughout the term of this Agreement. All expenses of maintenance and repairs shall be paid directly by the Owner (but NRUC shall have the right to pay such expenses on behalf of the Owner and to deduct such amounts from the Owner's Aggregate Net Revenues). However, if Owner shall have entered into an Optional Boxcar Maintenance Agreement with NRUC (an "Optional Maintenance Agreement"), then the terms thereof with respect to expenses of maintenance and repair shall control. If such Optional Maintenance Agreement is in effect then NRUC shall pay the maintenance fees due it on behalf of the Owner by deducting such fees when due from the Owner's Aggregate Net Revenues. NRUC agrees that it shall reasonably pursue all claims against third parties for damage to the Equipment on behalf and at the expense of the Owner. However, if the Owner shall have entered into an Optional Maintenance Agreement with NRUC, then NRUC shall bear the expense of claims against third parties for damage to the Equipment (except for claims with respect to collision and other casualty which are at the Owner's expense in any event). The Owner agrees that,

with respect to any claim or right against any third party relative to the physical condition of any Unit, the Owner shall, to the extent reasonably required to permit NRUC to seek recovery from such third party, assign such claim or right to NRUC. Unless NRUC is obligated to bear the cost or expense for which recovery is sought, such recovery shall be for the benefit of the Owner. NRUC may elect to require the Owner to advance reasonable costs to be incurred by NRUC on the Owner's behalf in any particular case.

F. NRUC shall make, or cause to be made, in either case at the expense of the Owner, all alterations or modifications to the Equipment required by government or industry regulations; provided, however, if the direct costs of such alterations or modifications shall exceed \$500 per Unit (computed cumulatively from the date of this Agreement), then NRUC shall first give the Owner prior written notice of the proposed alterations and modifications and an estimate of the cost thereof, and NRUC shall not thereafter make or cause such modifications to be made if the Owner advises NRUC in writing within fifteen days after receipt of such notice that Owner does not desire to have such alterations or modifications made. In the event Owner elects not to proceed with such required alterations or modifications, NRUC may elect to terminate this Agreement as to the Equipment requiring such alterations or modifications upon five days' prior written notice to Owner.

G. NRUC shall take appropriate steps to ensure that no Unit will be used predominantly outside the United States within the meaning of Section 48(a)(2)(A) of the Internal Revenue Code of 1954 (as amended), or any successor provisions thereof, and applicable regulations thereunder.

5. Receipt and Disbursement of Revenue.

A. NRUC shall collect, on behalf of the Owner, all mileage charges and car hire revenues paid by railroads with respect to the use of the Equipment. Such mileage charges and car hire revenues are referred to herein as the "Gross Revenues." In addition to those items of expense which may be paid by NRUC for the account of Owner pursuant to this Agreement, NRUC shall, at the expense of Owner, pay the following designated expenses as may be required to be paid with respect to the Owner's Equipment: movement and storage expenses, any sales tax which may be imposed with respect to such Gross Revenues, car hire claim relief allowed any railroad by NRUC, and adjustments or refunds of Gross Revenues payable to railroads. Such designated expenses are referred to herein as the "Designated Expenses." The excess of the Owner's Gross Revenues over Designated Expenses is referred to herein as the "Aggregate Net Revenues." The Owner's Aggregate Net Revenues for each calendar quarter are referred to herein as the "Owner's Quarterly Net Revenues."

B. NRUC shall have the right, if it so determines, to make disbursements on behalf of the Owner from the Owner's Aggregate Net Revenues of the following expenses applicable with respect to the Equipment owned by the Owner:

- (i) The management fee payable to NRUC as provided in Section 7;
- (ii) Costs of maintenance and repair for which the Owner is responsible hereunder;
- (iii) Maintenance fees payable to NRUC pursuant to the Optional Maintenance Agreement if in effect;
- (iv) Ad valorem and similar taxes.

C. NRUC shall distribute Owner's Quarterly Net Revenues, less any expenses paid pursuant to subparagraph B hereof, quarterly, 15 days after the close of each calendar quarter. Such disbursement shall be to an account of the Owner and shall be accompanied by a report to Owner in sufficient detail

to permit calculation of the management fee and any other sums due NRUC at that time.

D. In the event that Gross Revenues are insufficient to discharge any expenses (including Designated Expenses) attributable to the Equipment, the Owner shall pay such expenses as are not covered by Gross Revenues for which Owner is responsible or promptly reimburse NRUC for payment of the same as the case may be.

6. Conflicts of Interest. Owner understands that NRUC is managing other boxcars for its own account and for the account of persons associated with NRUC and that NRUC may have conflicts of interest between the management of Owner's Equipment and other boxcars owned, controlled or managed by NRUC. Although there can be no assurance that the Owner's Equipment will earn revenues equal to those of other railroad equipment owned, controlled or managed by NRUC, NRUC agrees to use reasonable efforts to integrate the Owner's Equipment into the fleet of railroad equipment managed by NRUC and to manage the Owner's Equipment in a manner consistent with the management by NRUC of railroad equipment for all other persons in an effort to provide the same rate of utilization for the Owner's Equipment that it achieves for all other boxcars which it manages. NRUC shall have no liability under this Section 6 except for fraud, bad faith or gross mismanagement.

7. Management Fees. In consideration of the management services performed by NRUC, the Owner agrees to pay NRUC 20% of all revenues earned by the Owner's Units (net of reclaims).

8. Insurance. NRUC will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained all risk, physical loss and damage insurance in the amount of \$20,000 with respect to all Units subject hereto. Such insurance may provide for a \$500 deductible per Unit. NRUC will also cause to be carried and maintained public liability insurance in an amount not less than \$3,000,000. NRUC will furnish to the Owner and the Lender, concurrently with the execution hereof and

thereafter at intervals of not more than twelve (12) calendar months, proof of insurance coverage for the ensuing year. NRUC will agree to advise the Owner and the Lender promptly of any lapse of any such insurance or of any default of payment of any premium and of any other act or omission of NRUC of which it has knowledge which might, in its opinion, invalidate or render unenforceable, in whole or in part, any insurance on the Units. All insurance shall be taken out in the name of, and losses paid thereunder shall be payable to, NRUC, the Owner and the Lender, as their interest may appear. The policies or certificates shall provide that there shall be no recourse against the Owner or the Lender for the payment of premiums and shall provide for at least thirty (30) business days' prior written notice to be given to the insureds by the underwriters in the event of cancellation. If NRUC shall default in the payment of any premium in respect of any such insurance policies, the Owner or the Lender may, but shall not be obligated to, pay such premium, and if either the Owner or the Lender shall do so, NRUC shall repay the amount thereof to the Owner or the Lender on demand, together with interest in the amount of 11 1/2% per annum.

9. Compliance with Applicable Laws, Rules and Regulations. NRUC agrees that to the extent it has physical possession and can control use of the Units, the Units will at all times be used and operated under and in compliance with the laws of the jurisdictions in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of the Units, except that either the Owner or NRUC may in good faith and by appropriate proceedings contest the application of any such rule, regulation, or order in any reasonable manner at the expense of the contesting party.

10. Indemnification. Owner and NRUC jointly and severally acknowledge, agree and covenant that NRUC is entering into this Agreement solely as the agent of the Owner.

A. The Owner agrees that he shall not attempt to enter into contracts or commitments in the name, or on behalf of, NRUC, or to bind NRUC in any manner or respect whatsoever except insofar as may be consistent with NRUC's status as agent under this Agreement. Further, the Owner agrees to indemnify and hold NRUC harmless from any and all claims, demands, causes of action (at law or equity), costs, damages, reasonable attorneys' fees, expenses and judgments which may hereafter be asserted against or sustained by NRUC by reason of a claim of a third party against NRUC based on or relating to the Equipment or arising out of operation or use thereof or the Owner's title thereto, except a claim which gives rise to NRUC's obligation to indemnify the Owner hereunder.

B. NRUC agrees that it shall not attempt to enter into contracts or commitments in the name, or on behalf of, the Owner, or to bind the Owner in any manner or respect whatsoever except insofar as may be consistent with NRUC's status as agent under this Agreement. NRUC agrees to indemnify and hold harmless the Owner from and against any and all claims, demands, causes of action (at law or equity), costs, damages, reasonable attorneys' fees, expenses and judgments which may hereafter be asserted against or sustained by the Owner by reason of any act or omission by NRUC (i) if a result of negligence, fraud or bad faith of NRUC, (ii) if a result of any misrepresentation or breach of any covenant or warranty made by NRUC hereunder, or (iii) if a result of any act of NRUC outside the scope of NRUC's authority granted under this Agreement.

11. Default.

A. The occurrence of any of the following events shall be Events of Default hereunder:

(i) The nonpayment by either party of any sum required hereunder to be paid by the other party within 10 days after notice thereof;

(ii) The default by either party under any other material term, covenant or condition of this Agreement which is not cured with 10 days after notice thereof from such party.

(iii) Any affirmative act of insolvency by NRUC, or the filing by NRUC of any petition or action under any bankruptcy, reorganization, insolvency, or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against NRUC that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of NRUC, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjecting of any of the property of NRUC to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which substantially impairs the capacity of NRUC to fulfill its obligations under this Agreement.

12. Remedies Upon Default.

A. Upon the occurrence of any Event of Default by one party to this Agreement, the other party may terminate this Agreement and proceed by appropriate court action to enforce performance by the other party of this Agreement and to recover direct financial damages which result from a breach thereof and such defaulting party shall bear the other party's costs and expenses, including reasonable attorney's fees, in securing such enforcement;

B. In the event of default by NRUC, the Owner may by notice in writing to NRUC, terminate the right of possession of NRUC of the Units, and thereupon the Owner may by its agents enter upon any premises where the Units may be located and take possession of them and henceforth hold, possess and enjoy the same free from any rights of NRUC;

C. In the event of default by the Owner, NRUC, by notice in writing to the Owner, may terminate its obligations hereunder.

13. Termination. At the expiration or termination of this Agreement as to any Units NRUC will surrender possession of such Units to the Owner by delivering the same to such location as the Owner shall reasonably designate. The assembling, delivery, storage and transporting of the Units shall be at the expense and the risk of the Owner except in the event of a termination by reason of a default by NRUC under section 11 of this Agreement. A Unit shall be deemed terminated and no longer subject to this Agreement upon removal of the railroad markings from the Unit placed thereon by NRUC and the placing thereon of such markings as may be designated by the Owner.

NRUC, at the expense of the Owner will arrange for storage of the Units for such period of time as shall be required by the Owner or the Lender, provided, that if such termination results from a default by NRUC under Section 11 of this Agreement, NRUC shall arrange for storage of the Units at its expense for 90 days.

If such Units are not on the railroad line of NRUC or its affiliates upon the expiration or termination of this Agreement, all costs of assembling, delivering, storing, and transporting such Units, except as provided above, to NRUC's railroad line or the railroad line of a subsequent agent, purchaser or lessee shall be borne by the Owner.

From and after termination of this Agreement with respect to any Unit and until its return to the Owner, all revenues earned by such Unit shall be paid to the Owner after deducting the management fee provided in Section 7.

14. Warranties and Covenants. NRUC represents, warrants and covenants that:

A. NRUC is a corporation duly organized, validly existing and in good standing under the laws of the State of South

Carolina and has the corporate power and authority, and is duly qualified and authorized to do business wherever necessary to carry out its present business and operations and to own or hold its properties and to perform its obligations under this Agreement.

B. The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to NRUC, or result in any breach of or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of NRUC or on the Units pursuant to any instrument to which NRUC is a party or by which it or its assets may be bound.

C. NRUC is not a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as NRUC can now reasonably foresee, will adversely affect the ability of NRUC to perform its obligations under this Agreement.

D. Neither NRUC nor its counsel knows of any requirements for recording, filing or depositing this Agreement, other than pursuant to title 49 Section 11303 of the Interstate Commerce Act, which is necessary to preserve or protect of the Vendor in the United State of America.

15. Lease and Assignment.

A. NRUC shall not have the right to assign this Agreement without the prior written consent of the Owner and the Lender.

B. All rights of the Owner hereunder are hereby assigned, pledged, mortgaged, transferred by the Owner to the Lender as additional security for the obligations of the Owner under the Note and Security Agreement and NRUC hereby acknowledges such assignment and agrees upon written request by the Lender to pay all revenues and other monies due to the Owner hereunder directly to the Lender to be applied by the Lender first to Owner's Note to Lender and the balance to Owner. This Agreement

and NRUC's rights hereunder are and shall be subject and subordinate to the rights of the Lender under the Security Agreement.

The making of the foregoing assignment by the Owner shall not serve to relieve the Owner of any liability or undertaking hereunder, nor shall such assignment impose any liability or undertaking hereunder upon the Lender.

16. Miscellaneous.

A. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

B. Any notice required or permitted to be given by one party to another hereunder shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

OWNER at: The address set forth on the execution page hereof.

NRUC at: 1100 Centre Square East
 1500 Market Street
 Philadelphia, Pennsylvania 19102

LENDER at: P. O. Box 120
 Charlotte, North Carolina 28201

or such other address as such person may from time to time designate by such notice in writing to the other.

C. NRUC shall take all action requested by the Owner or the Lender to confirm the interest of the Owner or the Lender in the Units and that NRUC has no interest in the Units other than as Agent hereunder.

D. During the continuance of this Agreement, the Owner and the Lender shall have the right at their own cost and expense, to inspect the Units at any reasonable time or times wherever the Units may be.

E. No failure or delay by either party shall constitute a waiver or otherwise affect or impair any right, power or remedy available to such party nor shall any waiver or indulgence by either party or any partial or single exercise of

any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right power or remedy.

F. This Agreement shall be governed by and construed according to the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date above written.

NATIONAL RAILWAY UTILIZATION
CORPORATION

By: *[Signature]*

Title: *President*

ATTEST:

F. W. Stroppek

Title: *Asst. Sec.*

[Signature]
OWNER

415 Crescent Ave

Street or Post Office Address

Greenville, S. C.

City and State *29605*

STATE OF Pennsylvania
COUNTY OF Philadelphia

On this 1st day of October, 1980, before me personally appeared John R. Mariscotte to me personally known, who, being by me duly sworn, says that he is ~~a Vice~~ President of National Railway Utilization Corporation, and D. W. Stizpel, to me personally known to be the Asst. Secretary of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

MARTHA T. MILLS
Notary Public

My Commission Expires: MARCH 5, 1984
MARTHA T. MILLS
Notary Public, Phila., Phila. Co.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

On this 1st day of October, 1980, before me personally appeared BUCK MICKEL to me personally known, being by me duly sworn, says that he signed the Management Agreement, and he acknowledges that the execution of the foregoing instrument was his free act and deed.

DOROTHY F. KING
Notary Public

My Commission Expires: OCT. 17, 1989
DOROTHY F. KING
Notary Public of South Carolina